

IN THE SUPREME COURT OF CALIFORNIA

BRONCO WINE COMPANY et al.,)
)
 Petitioners,)
)
 v.)
)
 JERRY R. JOLLY, as)
 Director, etc., et al.,)
)
 Respondents;)
 _____)
)
 NAPA VALLEY VINTNERS)
 ASSOCIATION,)
)
 Intervener.)
 _____)

S113136
Ct.App. 3, No. C037254

ORDER MODIFYING OPINION
[NO CHANGE IN JUDGMENT]

BY THE COURT:

The opinion herein, appearing at 33 Cal.4th 943, is modified as follows:

1. In the sentence beginning on page 951 and continuing on page 952, the word "almost" is inserted between the words "used" and "exclusively," so that the sentence reads, "Under Bronco's ownership, all three of these brands have been used almost exclusively to sell wines made from grapes grown outside Napa County."

2. In the second sentence of footnote 5 on page 952, the term "scientific surveys" is replaced with the term "survey results," so that the sentence reads, "The Legislature's findings to the contrary, however, are supported both by

testimony and survey results presented at the hearings disclosing consumer confusion relating to such labels."

3. In the first sentence of the last partial paragraph on page 978, the word "any" between the words "preempt" and "more" is deleted, so that the sentence reads, "Bronco further suggests that *subsequent* to the enactment of 27 United States Code section 205(e) in August 1935 and the adoption, by agencies within the Department of the Treasury, of implementing regulations, both Congress and the federal regulators manifested intent that the federal wine labeling regulations would preempt more stringent state wine labeling regulations."

4. In the last two sentences of the full paragraph on page 980 and the citation between the sentences, the words "additionally and broadly" between the words "regulation" and "barred" are deleted, the word "'production'" is replaced with the word "sale," the reference to section 6 in the citation is deleted, and the words "for wines produced" between the words "barred" and "in" are deleted, so that these sentences and citation read, "Third, by 1942, a California regulation barred the sale of wines labeled with so-called coined (or semi-generic) brand names if the 'brand designation resembles an established wine type name such as . . . Madeira, . . . Port, . . . Claret, [or] Burgundy, etc. . . .' (See 1942 Regs., art. II, § 8.) Under this and subsequent versions of the same regulation, a label such as 'Burgundy brand' was long barred in California.⁵⁰"

5. In the second sentence of the first paragraph on page 981, the words "for wines produced in California" between the words "prohibited" and "name," together with the accompanying commas, are deleted, so that the sentence reads, "The third provision described above prohibited name types that the federal regulations have permitted since 1941 upon a proper showing."

The modification does not affect the judgment.